In the Supreme Court
OF THE
United States

OCTOBER TERM, 1946

No. 158

J. E. HADDOCK, LIMITED, and UNITED PACIFIC INSURANCE COMPANY,
Petitioners,

vs.

WARREN H. PILLSBURY, Deputy Commissioner and HUGH A. VORIS, Assistant Deputy Commissioner, of the United States Employees' Compensation Commission for the 13th Compensation District, and ADELA F. MUCH,
Respondents.

PETITION FOR A REHEARING.

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PETITION FOR A REHEARING.

To the Honorable Supreme Court of the United States:

Petitioners, J. E. Haddock, Limited, and United Pacific Insurance Company, respectfully petition for a rehearing in the above entitled cause upon the following ground:

(1)

PROBABILITY EXISTS THAT THE JUDGMENT AND OPINION OF THE CIRCUIT COURT OF APPEALS WILL SERIOUSLY HINDER FUTURE ADMINISTRATION OF THE LAW AND IT IS THEREFORE A MATTER OF PUBLIC INTEREST THAT THE CAUSE BE DECIDED BY THIS COURT.

The District Court and counsel for the parties regarded the motion to dismiss filed by respondents on October 13, 1944 (R 17, 18), as made under Rule 41 (b) of the Federal Rules of Civil Procedure. All believed that in their circuit the decisions of the Circuit Court of Appeals made it mandatory that ruling on the motion be followed by formal findings of fact and conclusions of law before a final judgment could be entered in the action. (*Young v. United States,* 111 F. 2d 823, 834; *Perry v. Baumann,* 122 F. 2d 409, 410.) Accordingly, when the District Court ruled on the motion on March 15, 1945, its "Memorandum Opinion and Order Sustaining Order of Compensation Commissioner" (R 18, 19) was not regarded as a final decision, for on June 7, 1945, respondents prepared, served upon petitioners, and lodged with the clerk of the District Court, formal findings of fact and conclusions of law which the trial judge signed on June 14, 1945 (R 20-23), and on August 27, 1945, respondents prepared, served upon petitioners, and the trial judge signed, a formal judgment in the action pursuant to the findings of fact and conclusions of law (R 23, 24). All believed that under the decisions of the Circuit Court of Appeals in their circuit their conception and interpretation that the final judgment

in the action was the formal judgment of August 27, 1945, and not the informal "Memorandum Opinion and Order" of March 15, 1945, would be accepted and respected on appeal. (*Uhl v. Dalton,* 151 F. 2d 502; *Peoples Bank v. Federal Reserve Bank of San Francisco,* 149 F. 2d 850, 851; *Monarch Brewing Co. v. George J. Meyer Mfg. Co.,* 130 F. 2d 582.)

On the theory that the informal "Memorandum Opinion and Order" of March 15, 1945, was the final judgment in the action, the Circuit Court of Appeals dismissed the appeal from the formal judgment of August 27, 1945. (R 193-203.) The dismissal is intolerant to a fair standard of appellate procedure in federal courts. It sets up a standard which demands the taking of appeals from informal orders, which a trial judge by statement or conduct disavows as his final judgment in the action, because of fear that appellate courts will not accept or respect the disavowal. The standard invites and encourages appeals which appellants believe needless and premature but which they must prosecute because they are forced to distrust both trial and appellate courts.

The standard is an unfair one in its application to any type of case. Its unfairness is marked in cases like the present where the proceedings are under a remedial statute, the Longshoremen's and Harbor Workers' Compensation Act (R 199), and the hearing of appeals on the merits should be particularly favored and furthered. Here it was the employer and its insurance carrier that were trapped by the

procedural fogs. But the same procedural fogs will equally entrap employees seeking compensation under the Act. Clearly, probability exists that the judgment and opinion of the Circuit Court of Appeals will seriously hinder future administration of the law and it is therefore a matter of public interest that the cause be decided by this court.

This court has said that issuance of certiorari is justified when such probability exists.

Federal Trade Commission v. American Tobacco Co., 274 U.S. 543.

This court has also said that issuance of certiorari is justified when an important question of public interest is involved.

Magnum Import Co. v. Coty, 262 U.S. 159.

Recurrently, this court has exercised its power of supervision over the administration of justice in the federal courts.

Thiel v. Southern Pac. Co., 66 S.Ct. 984, 988;
Anderson v. United States, 318 U.S. 350, 351;
McNabb v. United States, 318 U.S. 332, 333-342;
Reconstruction Finance Corp. v. Prudence S.A. Group, 311 U.S. 579, 583;
Rorick v. Commissioners, 307 U.S. 208, 213.

Wherefore petitioners pray that the order denying the petition for certiorari be revoked and the writ ordered to issue.

Dated, San Francisco, California,
October 30, 1946.

FRANK J. CREEDE,
Counsel for Petitioners.

KEITH, CREEDE & SEDGWICK,
MCCOMB & NORDMARK,
GODFREY NORDMARK,
Of Counsel.

CERTIFICATE OF COUNSEL.

The undersigned, counsel for petitioners herein, hereby certifies that the foregoing petition for rehearing is presented in good faith and not for delay.

Dated, San Francisco, California,
October 30, 1946.

FRANK J. CREEDE,
Counsel for Petitioners.